

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Criminal Action
v.)	No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV, also)	
known as Jahar Tsarni,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

EXCERPT
JURY TRIAL - DAY TWENTY-SEVEN
OPENING STATEMENT BY MS. CLARKE

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Wednesday, March 4, 2015
10:41 a.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

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P R O C E E D I N G S

* * *

MS. CLARKE: We meet in the most tragic of circumstances, tragedy in the lives of the victims of the bombings, lives that were lost and torn and shattered: the loss of a precious eight-year-old boy, whose smile captured all of our hearts; a young woman who -- with an infectious laugh, who was always there for her friends and her family; a young graduate student whose passion for music was so clear, and she embraced Boston as her home away from home; and a very fine young police officer whose lifelong dream was to protect and serve.

The circumstances that bring us here today still are difficult to grasp. They're incomprehensible. They're inexcusable. You just heard about the devastation, the loss, and the unbearable grief, and we're going to see it, feel it, and agonize with every witness who comes to talk about what they saw, they felt, and they experienced and what happened to them and to those that they love.

For the next several weeks, we're all going to come face to face with unbearable grief, loss, and pain caused by a series of senseless, horribly misguided acts carried out by two brothers: 26-year-old Tamerlan Tsarnaev and his younger brother, 19-year-old Jahar.

The government and the defense will agree about many

1 things that happened during the week of April 15th, 2013. On
2 Marathon Monday, Tamerlan Tsarnaev walked down Boylston Street
3 with a backpack on his back, carrying a pressure cooker bomb,
4 and put it down in front of the Marathon Sports near the finish
5 line of the marathon. Jahar Tsarnaev walked down Boylston
6 Street with a backpack on his back carrying a pressure cooker
7 bomb and placed it next to a tree in front of the Forum
8 restaurant. The explosions extinguished three lives. They
9 unalterably injured and devastated many others.

10 After their pictures were on television and on the
11 Internet, Tamerlan and Jahar went on a path of devastation the
12 night of April the 18th, leaving dead in their path a young MIT
13 police officer and a community in fear and sheltering in place.
14 Tamerlan held an unsuspecting driver, Dun Meng, at gunpoint,
15 demanded his money and compelled him, commanded him, to drive
16 while Jahar followed behind.

17 The evening ended in a shootout. You've heard about
18 it. Tamerlan walked straight into a barrage of gunfire,
19 shooting at the police, throwing his gun, determined not to be
20 taken alive. Jahar fled, abandoned a car, and was found hiding
21 in a boat.

22 There's little that occurred the week of April the
23 15th -- the bombings, the murder of Officer Collier, the
24 carjacking, the shootout in Watertown -- that we dispute. If
25 the only question was whether or not that was Jahar Tsarnaev in

1 the video that you will see walking down Boylston Street, or if
2 that was Jahar Tsarnaev who dropped the backpack on the ground,
3 or if that was Jahar Tsarnaev in the boat -- captured in the
4 boat, it would be very easy for you: It was him.

5 So you might say, why a trial?

6 Now, you've heard several instructions, and when we
7 sat in this courtroom at the table -- you may remember that --
8 the judge talked to you about how this is a capital trial. The
9 government has elected to seek the death penalty, and in a
10 capital trial there are two phases --

11 MR. WEINREB: Objection, your Honor.

12 MS. CLARKE: -- one in which --

13 THE COURT: Overruled. Go ahead.

14 MS. CLARKE: -- one in which the jury makes a
15 determination of guilt and one in which the jury makes the
16 determination of the appropriate penalty.

17 The indictment in this case is not that simple. It's
18 30 counts. You heard the counts described. It's 74 pages
19 long. There are complicated federal charges involved. And
20 there will be much for you to analyze and decide.

21 But the essence of the charges are four sets of
22 criminal acts: the bombings at the marathon that killed three
23 people and injured many others, the murder of Officer Collier,
24 the carjacking, and the shootout in Watertown.

25 We do not and will not at any point in this case

1 sidestep -- attempt to sidestep or sidestep Jahar's
2 responsibility for his actions, but the indictment alleges, and
3 the prosecutor talked with you about why, and we think the
4 question of why is important, and this is where we disagree.

5 We have a different answer to this question: What
6 took Jahar Tsarnaev from this (indicating), Jahar and his
7 brother -- what took Jahar Tsarnaev from this (indicating) to
8 Jahar Tsarnaev and his brother with backpacks walking down
9 Boylston? What took Jahar Tsarnaev from this to this
10 (indicating)?

11 The government has told you their answer to the
12 question of why, and we ask you to look further. Clearly,
13 Tamerlan Tsarnaev became obsessed with violent Islamic
14 extremism. He became increasingly religious in a radical way.
15 He traveled to Russia in -- for six months in 2012 and explored
16 violent jihad with people over there. He became aggressively
17 obsessed with talking about Islam because of his radical views
18 and his insistence that people accept them and agree with them.
19 He disrupted services at the mosques here in Boston where he
20 once fit in. It was Tamerlan Tsarnaev who self-radicalized.
21 It was Jahar who followed him.

22 The evidence will show that Tamerlan planned and
23 orchestrated and enlisted his brother into these series of
24 horrific acts. Tamerlan Tsarnaev did the Internet research on
25 the electronic components, the transmitter and the receiver

1 you'll hear more about, for the two bombs, and he bought them.
2 Tamerlan Tsarnaev had the Russian-translated version of how to
3 build a bomb on his computer. Tamerlan bought the BBs that
4 were in the shrapnel that were in the pressure cooker and the
5 pipe bombs. Tamerlan bought the pressure cookers. Tamerlan
6 bought the fireworks that went into making the bombs. Tamerlan
7 bought the ammunition. Tamerlan bought both of the backpacks.
8 Rubber gloves with explosive residue on them were found in
9 Tamerlan's car. Tamerlan led the way down Boylston Street.
10 Tamerlan shot and killed Officer Collier. Tamerlan pointed the
11 gun at Dun Meng, demanded his money, commanded him to drive
12 away, telling him, "I just killed a police officer."

13 You'll hear evidence about computers and the
14 electronic devices, phones, hard drives that were seized in
15 this case, and it will show that Tamerlan spent much of his
16 time on the Internet in death and destruction and images of
17 carnage in the Middle East. Make no mistake, Jahar Tsarnaev's
18 computer had many of the materials that the prosecutor told you
19 about: *Inspire Magazine*, "Join the Caravan," a number of
20 extremist materials that you'll hear about. But there will not
21 be any evidence that Jahar downloaded those materials as if he
22 were searching the Internet to find them.

23 The earliest traces of any extremist materials go back
24 to a thumb drive, a jump drive. You know what I'm talking
25 about? You stick in the computer and you transfer files. The

1 earliest traces of the extremist materials traced back to this
2 thumb drive that has never been found, but forensics can tell
3 you about it. The last traces of attachment -- when you stick
4 it into the computer and pull it out, the attachment into the
5 computer -- were into Tamerlan's laptop, Jahar's laptop, and a
6 desktop computer that was at the Norfolk Street apartment where
7 Tamerlan and his wife and daughter lived, where the family had
8 lived. The last known attachment was, then, the day that
9 Tamerlan left for Russia for six months in 2012.

10 So as you hear the computer evidence, please ask:
11 What's the source of the document? Where else was it? Who
12 else had it? Where did it come from? Can I know by the fact
13 that it's on there who put it there and why?

14 An analysis of the computer evidence will, at
15 baseline, show that both Tamerlan and Jahar's computers had
16 this library of extremist materials, but the evidence will also
17 show you that, while Tamerlan Tsarnaev was looking and immersed
18 in death and destruction and carnage in the Middle East, Jahar
19 spent most of his time on the Internet doing things that
20 teenagers do: Facebook, cars, girls. The evidence will also
21 help point you in the direction of understanding the flow of
22 the materials: who got what first, who got the most, and who
23 had the most.

24 The evidence will not establish, and we will not
25 argue, that Tamerlan put a gun to Jahar's head or that he

1 forced him to join in the plan, but you will hear evidence of
2 the kind of influence that this older brother had.

3 MR. WEINREB: Objection, your Honor.

4 MS. CLARKE: During the period of time --

5 THE COURT: Very limited evidence, if that, but go
6 ahead.

7 MS. CLARKE: Thank you, your Honor.

8 During the period of time when Tamerlan was becoming
9 more radical and traveling to Russia and identifying with
10 violent jihad, the evidence will show you what was happening
11 with Jahar. His parents: his dad, Anzor; his mother,
12 Zubeidat --

13 THE COURT: I think this is -- yeah, I think the
14 family history is not appropriate, as I previously indicated.

15 MS. CLARKE: His parents left and moved back to
16 Russia. He was a student at UMass Dartmouth, but things were
17 not going very well. His grades were plummeting; he wasn't
18 going to class; and he was in danger of failing out of school.
19 And Jahar, in one of those tough times of adolescence, as we
20 all know, became much more vulnerable --

21 MR. WEINREB: Objection, your Honor.

22 MS. CLARKE: -- to the influence --

23 THE COURT: No, go ahead.

24 MS. CLARKE: -- of someone that he loved and respected
25 very much: his older brother.

1 You'll see from the evidence that Tamerlan had a
2 special kind of influence dictated by his age, their culture,
3 and Tamerlan's sheer force of personality. They committed the
4 acts in April of 2013 that led to death and destruction, and
5 they are inexcusable and for which Jahar must be held
6 responsible. But he came to his role by a very different path
7 than suggested to you by the prosecution: a path born of his
8 brother, created by his brother, and paid by his brother. And
9 unfortunately and tragically, Jahar was drawn into his
10 brother's passion and plan, and that led him to Boylston
11 Street.

12 The government talked to you about writings that were
13 in the boat where Jahar was found hiding and where he had found
14 a pencil, and those writings are very important to read in
15 their entirety. And you'll see them. You'll get to read them.
16 But essentially what Jahar wrote was, first, he expressed that
17 he was jealous of his brother who had achieved martyrdom and
18 his wish that he would as well. He wrote that he perhaps
19 guessed that he was alive so that he could shed some light on
20 their motives, and he wrote words that he had read and
21 heard -- read and heard -- that the United States was
22 responsible for the suffering of Muslims around the world.

23 We ask you to carefully evaluate the testimony -- and
24 there will be testimony about these writings, not just the
25 writings themselves -- but about the writings inside the boat,

1 where they came from, and how deeply rooted they may or may not
2 be.

3 And at the end of this first phase of the case, we
4 think that you will have the evidence that you need to make the
5 decisions about the 30 counts, about the four sorts of --
6 essence of the criminal charges. We think that you will have
7 the evidence that you need to weigh and analyze and make the
8 decision in the first phase. But there will be questions that
9 we cannot answer now. There will be questions that we ask you
10 to carry over to the second phase, as the judge has explained.

11 When we talked to you in voir dire around this table
12 centered in the courtroom, the government, the defense, the
13 Court was here. Most of you acknowledged that you knew
14 something about this case. And most of you said -- or many of
15 you said that you had seen images of devastation, and many of
16 you knew about certain events --

17 MR. WEINREB: Objection, your Honor.

18 MS. CLARKE: -- and people whose lives --

19 THE COURT: Go ahead.

20 MS. CLARKE: -- were changed.

21 But none of you would be sitting here today, right
22 now, had you not convincingly and with conviction told us that
23 you can remain open through this phase, that you can hold your
24 questions throughout the trial, and that you can remain open --
25 your hearts and minds open to thinking about the evidence all

1 the way.

2 Witnesses -- many witnesses are about to start to be
3 called, some who work in forensics, some police officers who
4 risked their lives, a number of first responders who cared for
5 victims, a number of victims who were injured, and survivors,
6 eyewitnesses, people that lost loved ones. We're all going to
7 see and listen to their testimony with heavy hearts.

8 Holding your assurances to us that you can hold your
9 minds open to not only listening to the who, what, where, and
10 when, but to the how and why, those assurances are going to be
11 tested and going to be very difficult promises to keep.

12 Holding the questions that you have that can't be answered in
13 this phase, holding them open -- your hearts and minds open
14 until the second phase will not be an easy task, but that's
15 what you promised when you swore your oath as jurors. That's
16 what the judge expects. That's what our system of justice
17 expects. It's going to be a lot to ask of you to hold your
18 minds and hearts open, but that is what we ask.

19 Thank you.
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C E R T I F I C A T E

I, Marcia G. Patrisso, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

Date: 3/4/15